

AMENDED IN ASSEMBLY JUNE 15, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 18, 2006

**SENATE BILL**

**No. 1325**

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**Introduced by Senator Scott**

February 16, 2006

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An act to amend Sections 7620, 7630, 7633, 7825, and ~~8700~~, 8700 of, and to add Sections 7606 and 8613.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, Scott. Adoption.

(1) Existing law requires a person who may have conceived a child by an act of intercourse to submit to the jurisdiction of the courts of this state and specifies the venue where an action may be filed by or against that person. Existing law permits a child, a child's natural mother, a presumed father or other interested party, as specified, to bring an action to determine the existence or nonexistence of a father and child relationship.

This bill would additionally require a person who causes conception through assisted reproduction in this state to submit to the jurisdiction of the courts of this state. This bill would additionally permit a person who enters an assisted reproduction agreement, as specified, to bring an action to establish a parent and child relationship. ~~This bill would require an action by or against that person to be filed where the child is expected to be born or is born.~~

(2) Under existing law, an action to determine a parent and child relationship may be brought before the birth of that child.

This bill would permit the court to enter an order or judgment based on that action before the birth of the child. This bill would further prohibit enforcement of that order or judgment until the birth of the child.

(3) Under existing law, if a parent is convicted of a felony, a proceeding to terminate parental rights may be filed.

This bill would additionally permit the court, as part of a proceeding to terminate parental rights, to consider a parent's criminal record prior to the felony conviction, as specified, in making a finding that a parent is unfit to have future custody or control of his or her child.

(4) Under existing law, if a proceeding to terminate the parental rights of a presumed father has been filed, an action to determine the parent and child relationship between the presumed father and child is required to be consolidated with the termination proceeding.

This bill would require an action to determine the existence or nonexistence of a parent and child relationship between a presumed father and child to be consolidated with a proceeding that has been filed for the emancipation of the child.

(5) Under existing law, a birth parent may relinquish a child to a licensed adoption agency for the adoption of that child. Existing law requires the licensed adoption agency to forward a written relinquishment signed by the birth parent to the Department of Social Services. Under existing law, that relinquishment is final within 10 business days after the relinquishment is filed with the department, unless a longer period of time is necessary, as specified. ~~Under existing law, if a birth mother relinquishes a child, the presumed father of that child may waive notice of or consent to the adoption of the child if he executes a form developed by the department before a notary.~~

This bill would require the relinquishment to be final 10 business days after the relinquishment is filed with the department unless the department sends written acknowledgment of receipt of the relinquishment before that date. ~~This bill would permit a presumed father to waive notice of or consent to the adoption if he executes the form developed by the department before a representative of a licensed adoption agency.~~

(6) Under existing law, if a prospective adoptive parent is in military service or service for another recognized entity, as specified, and shows by satisfactory evidence that it is impossible or impracticable to appear in court for an adoption proceeding, the

prospective adoptive parent may make his or her appearance at the proceeding through an attorney.

This bill would additionally permit a prospective adoptive parent to appear at an adoption proceeding through an attorney if the prospective adoptive parent shows by satisfactory evidence that it is impossible or impracticable to appear at the adoption proceeding.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7606 is added to the Family Code, to  
2 read:

3 7606. As used in this part, the following definitions shall  
4 apply:

5 (a) “Assisted reproduction” means conception by any means  
6 other than sexual intercourse.

7 (b) “Assisted reproduction agreement” means a written  
8 contract that includes a person who intends to be the legal parent  
9 of a child or children born through assisted reproduction and that  
10 defines the terms of the relationship between the parties to the  
11 contract.

12 SEC. 2. Section 7620 of the Family Code is amended to read:

13 7620. (a) A person who has sexual intercourse or causes  
14 conception with the intent to become a legal parent by assisted  
15 reproduction in this state thereby submits to the jurisdiction of  
16 the courts of this state as to an action brought under this part with  
17 respect to a child who may have been conceived by that act of  
18 intercourse or assisted reproduction.

19 (b) An action under this part shall be brought in one of the  
20 following:

21 (1) The county in which the child resides or is found.

22 (2) The county in which a licensed California adoption agency  
23 maintains an office if that agency brings the action.

24 (3) If the father is deceased, the county in which proceedings  
25 for probate of the estate of the father of the child have been or  
26 could be commenced.

27 ~~(4) In an action relating to an assisted reproduction agreement,~~  
28 ~~the county in which the child is expected to be born or is born.~~

29 SEC. 3. Section 7630 of the Family Code is amended to read:

1 7630. (a) A child, the child's natural mother, a man  
2 presumed to be the child's father under subdivision (a), (b), or (c)  
3 of Section 7611, an adoption agency to whom the child has been  
4 relinquished or a prospective adoptive parent of the child may  
5 bring an action as follows:

6 (1) At any time for the purpose of declaring the existence of  
7 the father and child relationship presumed under subdivision (a),  
8 (b), or (c) of Section 7611.

9 (2) For the purpose of declaring the nonexistence of the father  
10 and child relationship presumed under subdivision (a), (b), or (c)  
11 of Section 7611 only if the action is brought within a reasonable  
12 time after obtaining knowledge of relevant facts. After the  
13 presumption has been rebutted, paternity of the child by another  
14 man may be determined in the same action, if he has been made  
15 a party.

16 (b) Any interested party may bring an action at any time for  
17 the purpose of determining the existence or nonexistence of the  
18 father and child relationship presumed under subdivision (d) or  
19 (f) of Section 7611.

20 (c) An action to determine the existence of the father and child  
21 relationship with respect to a child who has no presumed father  
22 under Section 7611 or whose presumed father is deceased may  
23 be brought by the child or personal representative of the child,  
24 the Department of Child Support Services, the mother or the  
25 personal representative or a parent of the mother if the mother  
26 has died or is a minor, a man alleged or alleging himself to be the  
27 father, or the personal representative or a parent of the alleged  
28 father if the alleged father has died or is a minor.

29 (d) (1) If a proceeding has been filed under Chapter 2  
30 (commencing with Section 7820) of Part 4, an action under  
31 subdivision (a) or (b) shall be consolidated with that proceeding.  
32 The parental rights of the presumed father shall be determined as  
33 set forth in Sections 7820 through 7829, inclusive.

34 (2) If a proceeding pursuant to Section 7662 has been filed  
35 under Chapter 5 (commencing with Section 7660), an action  
36 under subdivision (c) shall be consolidated with that proceeding.  
37 The parental rights of the alleged natural father shall be  
38 determined as set forth in Section 7664.

39 (3) The consolidated action under paragraph (1) or (2) shall be  
40 heard in the court in which the proceeding is filed, unless the

1 court finds, by clear and convincing evidence, that transferring  
2 the action to the other court poses a substantial hardship to the  
3 petitioner. Mere inconvenience does not constitute a sufficient  
4 basis for a finding of substantial hardship. If the court determines  
5 there is a substantial hardship, the consolidated action shall be  
6 heard in the court in which the paternity action is filed.

7 (e) A party to an assisted reproduction agreement may bring  
8 an action at any time to establish a parent and child relationship  
9 consistent with the intent expressed in that assisted reproduction  
10 agreement.

11 SEC. 4. Section 7633 of the Family Code is amended to read:

12 7633. An action under this chapter may be brought, an order  
13 or judgment may be entered before the birth of the child, and  
14 enforcement of that order or judgment shall be stayed until the  
15 birth of the child.

16 SEC. 5. Section 7825 of the Family Code is amended to read:

17 7825. (a) A proceeding under this part may be brought where  
18 both of the following requirements are satisfied:

19 (1) The child is one whose parent or parents are convicted of a  
20 felony.

21 (2) The facts of the crime of which the parent or parents were  
22 convicted are of such a nature so as to prove the unfitness of the  
23 parent or parents to have the future custody and control of the  
24 child. In making a determination pursuant to this section, the  
25 court may consider the parent's criminal record prior to the  
26 felony conviction to the extent that the criminal record  
27 demonstrates a pattern of behavior substantially related to the  
28 welfare of the child or the parent's ability to exercise custody and  
29 control regarding his or her child.

30 (b) The mother of a child may bring a proceeding under this  
31 part against the father of the child, where the child was conceived  
32 as a result of an act in violation of Section 261 of the Penal Code,  
33 and where the father was convicted of that violation. For  
34 purposes of this subdivision, there is a conclusive presumption  
35 that the father is unfit to have custody or control of the child.

36 SEC. 6. Section 8613.5 is added to the Family Code, to read:

37 8613.5. (a) (1) If it is impossible or impracticable for either  
38 prospective adoptive parent to make an appearance in person,  
39 and the circumstances are established by clear and convincing  
40 documentary evidence, the court may, in its discretion, waive the

1 personal appearance of the prospective adoptive parent. The  
2 appearance may be made for the prospective adoptive parent by  
3 counsel, commissioned and empowered in writing for that  
4 purpose. The power of attorney may be incorporated in the  
5 adoption petition.

6 (2) For purposes of this section, if the circumstances that make  
7 an appearance in person by a prospective adoptive parent  
8 impossible or impracticable are temporary in nature or of a short  
9 duration, the court shall not waive the personal appearance of  
10 that prospective adoptive parent.

11 (b) If the prospective adoptive parent is permitted to appear by  
12 counsel, the agreement may be executed and acknowledged by  
13 the counsel, or may be executed by the absent party before a  
14 notary public, or any other person authorized to take  
15 acknowledgments including the persons authorized by Sections  
16 1183 and 1183.5 of the Civil Code.

17 (c) If the prospective adoptive parent is permitted to appear by  
18 counsel, or otherwise, the court may, in its discretion, cause an  
19 examination of the prospective adoptive parent, other interested  
20 person, or witness to be made upon deposition, as it deems  
21 necessary. The deposition shall be taken upon commission, as  
22 prescribed by the Code of Civil Procedure, and the expense  
23 thereof shall be borne by the petitioner.

24 (d) The petition, relinquishment or consent, agreement, order,  
25 report to the court from any investigating agency, and any power  
26 of attorney and deposition shall be filed in the office of the clerk  
27 of the court.

28 (e) The provisions of this section permitting an appearance by  
29 counsel are equally applicable to the spouse of a prospective  
30 adoptive parent who resides with the prospective adoptive parent  
31 outside this state.

32 (f) If, pursuant to this section, neither prospective adoptive  
33 parent need appear before the court, the child proposed to be  
34 adopted need not appear. If the law otherwise requires that the  
35 child execute any document during the course of the hearing, the  
36 child may do so through counsel.

37 (g) If none of the parties appears, the court may not make an  
38 order of adoption until after a report has been filed with the court  
39 pursuant to Section 8715, 8807, 8914, or 9001.

40 SEC. 7. Section 8700 of the Family Code is amended to read:

1     8700. (a) Either birth parent may relinquish a child to the  
2 department or a licensed adoption agency for adoption by a  
3 written statement signed before two subscribing witnesses and  
4 acknowledged before an authorized official of the department or  
5 agency. The relinquishment, when reciting that the person  
6 making it is entitled to the sole custody of the child and  
7 acknowledged before the officer, is prima facie evidence of the  
8 right of the person making it to the sole custody of the child and  
9 the person's sole right to relinquish.

10    (b) A relinquishing parent who is a minor has the right to  
11 relinquish his or her child for adoption to the department or a  
12 licensed adoption agency, and the relinquishment is not subject  
13 to revocation by reason of the minority.

14    (c) If a relinquishing parent resides outside this state and the  
15 child is being cared for and is or will be placed for adoption by  
16 the department or a licensed adoption agency, the relinquishing  
17 parent may relinquish the child to the department or agency by a  
18 written statement signed by the relinquishing parent before a  
19 notary on a form prescribed by the department, and previously  
20 signed by an authorized official of the department or agency, that  
21 signifies the willingness of the department or agency to accept  
22 the relinquishment.

23    (d) If a relinquishing parent and child reside outside this state  
24 and the child will be cared for and will be placed for adoption by  
25 the department or a licensed adoption agency, the relinquishing  
26 parent may relinquish the child to the department or agency by a  
27 written statement signed by the relinquishing parent, after that  
28 parent has satisfied the following requirements:

29    (1) Prior to signing the relinquishment, the relinquishing  
30 parent shall have received, from a representative of an agency  
31 licensed or otherwise approved to provide adoption services  
32 under the laws of the relinquishing parent's state of residence, the  
33 same counseling and advisement services as if the relinquishing  
34 parent resided in this state.

35    (2) The relinquishment shall be signed before a representative  
36 of an agency licensed or otherwise approved to provide adoption  
37 services under the laws of the relinquishing parent's state of  
38 residence whenever possible or before a licensed social worker  
39 on a form prescribed by the department, and previously signed by  
40 an authorized official of the department or agency, that signifies

1 the willingness of the department or agency to accept the  
2 relinquishment.

3 (e) (1) The relinquishment authorized by this section has no  
4 effect until a certified copy is sent to, and filed with, the  
5 department. The licensed adoption agency shall send that copy  
6 by certified mail, return receipt requested, or by overnight courier  
7 or messenger, with proof of delivery, to the department no earlier  
8 than the end of the business day following the signing thereof.  
9 The relinquishment shall be final 10 business days after receipt  
10 of the filing by the department, unless any of the following  
11 apply:

12 (A) The department sends written acknowledgment of receipt  
13 of the relinquishment prior to the expiration of that 10-day  
14 period, at which time the relinquishment shall be final.

15 (B) A longer period of time is necessary due to a pending  
16 court action or some other cause beyond control of the  
17 department.

18 (2) After the relinquishment is final, it may be rescinded only  
19 by the mutual consent of the department or licensed adoption  
20 agency to which the child was relinquished and the birth parent  
21 or parents relinquishing the child.

22 (f) The relinquishing parent may name in the relinquishment  
23 the person or persons with whom he or she intends that  
24 placement of the child for adoption be made by the department or  
25 licensed adoption agency.

26 (g) Notwithstanding subdivision (e), if the relinquishment  
27 names the person or persons with whom placement by the  
28 department or licensed adoption agency is intended and the child  
29 is not placed in the home of the named person or persons or the  
30 child is removed from the home prior to the granting of the  
31 adoption, the department or agency shall mail a notice by  
32 certified mail, return receipt requested, to the birth parent signing  
33 the relinquishment within 72 hours of the decision not to place  
34 the child for adoption or the decision to remove the child from  
35 the home.

36 (h) The relinquishing parent has 30 days from the date on  
37 which the notice described in subdivision (g) was mailed to  
38 rescind the relinquishment.



1 (1) If the relinquishing parent requests rescission during the  
2 30-day period, the department or licensed adoption agency shall  
3 rescind the relinquishment.

4 (2) If the relinquishing parent does not request rescission  
5 during the 30-day period, the department or licensed adoption  
6 agency shall select adoptive parents for the child.

7 (3) If the relinquishing parent and the department or licensed  
8 adoption agency wish to identify a different person or persons  
9 during the 30-day period with whom the child is intended to be  
10 placed, the initial relinquishment shall be rescinded and a new  
11 relinquishment identifying the person or persons completed.

12 (i) If the parent has relinquished a child, who has been found  
13 to come within Section 300 of the Welfare and Institutions Code  
14 or is the subject of a petition for jurisdiction of the juvenile court  
15 under Section 300 of the Welfare and Institutions Code, to the  
16 department or a licensed adoption agency for the purpose of  
17 adoption, the department or agency accepting the relinquishment  
18 shall provide written notice of the relinquishment within five  
19 court days to all of the following:

20 (1) The juvenile court having jurisdiction of the child.

21 (2) The child's attorney, if any.

22 (3) The relinquishing parent's attorney, if any.

23 (j) The filing of the relinquishment with the department  
24 terminates all parental rights and responsibilities with regard to  
25 the child, except as provided in subdivisions (g) and (h).

26 (k) The department shall adopt regulations to administer the  
27 provisions of this section.